

REFERENCE TITLE: **authorizing agents for the deceased**

State of Arizona
House of Representatives
Forty-seventh Legislature
Second Regular Session
2006

HB 2326

Introduced by
Representative Reagan

AN ACT

AMENDING SECTION 32-1365.02, ARIZONA REVISED STATUTES; RELATING TO FUNERAL DIRECTORS AND EMBALMERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 32-1365.02, Arizona Revised Statutes, is amended to
3 read:

4 32-1365.02. Authorizing agents: consent for cremation,
5 disinterment or embalming: court resolution of
6 disputes

7 A. Except as provided in section 32-1365.01 and in subsection E of
8 this section, it is unlawful to cremate or disinter a dead human body without
9 prior written consent of the authorizing agent.

10 B. Except as provided in section 32-1365.01, it is unlawful to embalm
11 a dead human body without prior oral or written consent of the authorizing
12 agent.

13 C. A funeral establishment shall create a written record of an oral
14 consent given pursuant to this ~~subsection~~ SECTION that includes all of the
15 following:

- 16 1. The name of the authorizing agent.
- 17 2. The relation of the authorizing agent to the deceased.
- 18 3. The date and time that consent was given.
- 19 4. The name of the person who obtained the consent.
- 20 5. Any other information required by the board.

21 D. In determining who the proper authorizing agent is, the following
22 order of preference governs:

- 23 1. The surviving spouse.
- 24 2. A surviving adult child.
- 25 3. A surviving parent.
- 26 4. A surviving adult brother or sister.

27 5. For cremation or embalming, any other person or organization that
28 is willing to assume legal and financial responsibility for the cremation or
29 embalming. Preference under this paragraph shall be given in the following
30 order:

- 31 (a) The executor of the decedent's estate.
- 32 (b) The guardian of the decedent at the time of death.

33 E. On the order of a court or a county medical examiner, or a person
34 performing the duties of a county medical examiner, a dead human body shall
35 be disinterred.

36 F. If none of the persons listed in subsection D OF THIS SECTION is
37 willing or financially capable of providing for the cremation or embalming of
38 a dead human body, the public fiduciary or other person who is designated by
39 the county in which a death occurs to handle funeral arrangements may order
40 the cremation or embalming.

41 G. A funeral establishment, an employee or agent of a funeral
42 establishment or a licensee shall exercise due diligence to obtain the
43 consent required pursuant to this section from the proper authorizing agent.
44 **A CREMATORIAL, CEMETERY OR FUNERAL ESTABLISHMENT THAT CREMATES OR OTHERWISE**
45 **PROVIDES FOR THE LAWFUL DISPOSITION OF A DEAD HUMAN BODY ON THE DIRECTION OF**

1 A PERSON WHO CLAIMS TO BE THE AUTHORIZING AGENT IS IMMUNE FROM CRIMINAL AND
2 CIVIL LIABILITY AND IS NOT SUBJECT TO PROFESSIONAL DISCIPLINE.

3 H. IF THE AUTHORIZING AGENT IS UNWILLING, UNABLE OR UNAVAILABLE TO ACT
4 AS AUTHORIZING AGENT, THE PERSON'S RIGHT TO BE THE AUTHORIZING AGENT
5 TERMINATES AND PASSES AS FOLLOWS:

6 1. TO ANOTHER PERSON IN THE SAME DEGREE OF RELATIONSHIP TO THE
7 DECEDENT AS THE PERSON WHO HAS FAILED TO ACT.

8 2. IF THERE IS NO PERSON AS PRESCRIBED IN PARAGRAPH 1 OF THIS
9 SUBSECTION, TO THE NEXT PERSON IN THE ORDER OF PREFERENCE PRESCRIBED BY
10 SUBSECTION D OF THIS SECTION.

11 I. IT IS PRESUMED THAT THE AUTHORIZING AGENT IS UNWILLING, UNABLE OR
12 UNAVAILABLE TO ACT AS AUTHORIZING AGENT IF THAT PERSON HAS NOT MADE FINAL
13 ARRANGEMENTS FOR THE DISPOSITION OF THE DECEDENT WITHIN FIVE DAYS OF
14 RECEIVING WRITTEN OR VERBAL NOTICE OF THE DECEDENT'S DEATH OR WITHIN TEN DAYS
15 OF THE DECEDENT'S DEATH, WHICHEVER IS EARLIER.

16 J. ANY DISPUTE AMONG ANY OF THE PERSONS LISTED IN SUBSECTION D OF THIS
17 SECTION CONCERNING THEIR RIGHT TO CONTROL THE DISPOSITION, INCLUDING
18 CREMATION, OF A DECEDENT'S REMAINS SHALL BE RESOLVED BY A COURT OF COMPETENT
19 JURISDICTION. A CREMATORIAL, CEMETERY OR FUNERAL ESTABLISHMENT SHALL NOT BE
20 LIABLE FOR REFUSING TO ACCEPT THE DECEDENT'S REMAINS OR INTER, CREATE OR
21 OTHERWISE DISPOSE OF A DECEDENT'S REMAINS UNTIL IT RECEIVES A COURT ORDER OR
22 OTHER SUITABLE CONFIRMATION THAT THE DISPUTE HAS BEEN RESOLVED OR SETTLED.